

No. 14809

United States
Court of Appeals
for the Ninth Circuit

MYRTLE HOLLMANN, Appellant,

vs.

CATHERINE BRADY, Appellee.

Transcript of Record

Appeal from the District Court for the Territory of
Alaska, Third Division

FILED

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PAUL P. O'BRIEN, CLERK

United States
Court of Appeals
for the Ninth Circuit

CATHERINE BRADY, Appellee.

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Alaska, Third Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,
Third Division

No. A-7523

CATHERINE BRADY, Plaintiff,

vs.

MYRTLE HOLLMANN, Defendant.

COMPLAINT

The plaintiff complains of the defendant and for cause of action alleges:

I.

That on or about the 24th day of November, in the City of Anchorage, Third Division, Territory of Alaska, at that place known as the Pioneer Apartments, the defendant in a certain discourse and in the presence and hearing of diverse persons, maliciously spoke and published of and concerning plaintiff the false and malicious words following, to-wit: "You're not so smart (meaning the husband of the plaintiff, Charles Brady), you're married to an ex-whore (meaning the plaintiff) from Butte, Montana. I know all about it; she (meaning the plaintiff) worked with another whore called June", and other words of the same defamatory nature.

II.

That by reason of the said defamatory words, the plaintiff has been greatly injured in her good name and character, the plaintiff's health and well being has been impaired, and that said words have caused

serious and frequent marital disturbances, all to her damage in the sum of Fifty Thousand Dollars (\$50,000.00).

Wherefore the plaintiff prays judgment in the sum of \$50,000.00, costs of this suit, attorney fees, and all other relief that may be just and equitable.

McCUTCHEON & NESBETT,

/s/ By JOHN L. RADEN,
Attorneys for Plaintiff

Duly Verified.

[Endorsed]: Filed February 6, 1952.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant above named and for her answer to the complaint filed by the plaintiff, admits and denies as follows:

I.

The defendant answering denies each and every allegation set forth in Paragraph I.

II.

Answering Paragraph II, the defendant denies each and every allegation set forth in Paragraph II.

Wherefore, having fully answered the plaintiff's

complaint, defendant moves this Honorable Court to dismiss said complaint with her costs.

/s/ HAROLD J. BUTCHER,
Attorney for the Defendant

Duly Verified.

[Endorsed]: Filed March 19, 1952.

[Title of District Court and Cause.]

DEFENDANT'S PROPOSED INSTRUCTIONS
TO THE JURY

Instruction No. 1

A slander which consists of directly or indirectly charging another with conduct involving unchastity is not actionable in itself unless the misconduct imputed amounts to a criminal offense for which the party may be indicted and punished. Slander, no matter how gross, imputing unchastity to a woman, but which unchastity is not such as could bring about the criminal prosecution of a person against whom the slander was made is not actionable unless coupled with claim and proof of special damages and such slander is known as slander per quod. A slander which consists of directly or indirectly charging another with a crime for which the person could be indicted and punished is what is known as slander per se, which means slander in and of itself without proof of any actual damage.

Instruction No. 2

The words alleged to be spoken by the defendant, if the defendant spoke them, are not in themselves slanderous or defamatory. Slanderous or defamatory words, if spoken, must accuse plaintiff with the commission of a crime for which she could be charged and punished.

Pollard vs. Lion, 91 U.S. 225, pages 228 and 230.

Instruction No. 3

The words "you are married to an ex whore from Butte, Montana", do not impute a present crime or a specific crime for which, under the laws of the Territory of Alaska, the plaintiff could be charged, but at best, only impute that the plaintiff was an ex-whore from Butte, Montana. The plaintiff could not be indicted or punished with a criminal offense, under the laws of the Territory of Alaska, even if the plaintiff was an ex-whore from Butte, Montana. Therefore, the words, if you believe they were spoken, must be coupled with proof of special damages. Where the words are not in themselves actionable because the offense imputed will not subject the offender to criminal punishment, special damage must be alleged and proved in order to maintain the action.

Pollard vs. Lion, 91 U.S. 225, pages 234, 236 and 237.

* * * * *

[Endorsed]: Filed February 2, 1955.

[Title of District Court and Cause.]

COURT'S INSTRUCTIONS TO THE JURY

Numbers 1-14 inclusive and 5-A

* * * * *

Instruction No. 3

You are instructed that the utterance or publication of a false statement imputing unchastity or the commission of a crime such as prostitution is defamatory and slanderous in itself.

Truth, however, is a complete defense, but in this case no attempt has been made to prove the truth of the statement allegedly made, and therefore if you find that it was made as alleged its falsity is presumed and the defendant is liable in damages to the plaintiff in some amount unless the statement was privileged, as I shall hereinafter instruct you.

* * * * *

Instruction No. 6

If you find from a preponderance of the evidence that at or about the time and place stated the defendant made the statement as alleged in the complaint, or in substantially those terms, you should find a verdict in favor of the plaintiff for some sum between \$1 and \$50,000 as damages. But if you do not so find, or find that the statement was privileged, your verdict should be for the defendant.

If you find that the plaintiff is entitled to recover damages, then you may take into consideration the

social rank, standing, and position of the plaintiff; the injury, if any, to her reputation; the mental suffering, mortification and humiliation which she may have endured by reason of the publication of the statement referred to; and the injury, if any, to her health, marriage or marital relationship, and award her such amount as you think will fairly compensate her.

* * * * *

[Endorsed]: Filed February 2, 1955.

[Title of District Court and Cause.]

VERDICT NUMBER ONE

We, the jury, duly impanelled and sworn to try the above entitled cause, find for the plaintiff and assess her damages in the sum of \$1,500.00.

Dated at Anchorage, Alaska, this 2nd day of February, 1955.

/s/ ROBERT W. HAYES,
Foreman

[Endorsed]: Filed February 2, 1955.

In the District Court for the District of Alaska,
Third Division

No. A-7523

CATHERINE BRADY, Plaintiff,

vs.

MYRTLE HOLLMAN, Defendant.

JUDGMENT

The above entitled action came on for trial commencing January 31, 1955, the trial ending on the second day of February, 1955, before the above Court, the Honorable George W. Folta sitting as District Judge, the plaintiff being present in person and represented by McCutcheon & Nesbett, her attorneys, and the defendant being present in Court and represented by Harold Butcher, Esq., her attorney; a jury of twelve persons was regularly impaneled and sworn to try the cause and oral testimony having been introduced and admitted on behalf of both parties, whereupon the Court instructed the jury on the law in the matter and both counsel having argued the matter to the jury, the jury thereupon retired to consider their verdict. Thereupon at 5:00 o'clock p.m. on the 2nd day of February, 1955, the jury returned in to Court with a verdict which was unsealed in open Court and in the presence of the jury and found to be a verdict in favor of the plaintiff reading as follows:

“Verdict No. 1. We, the jury, duly impaneled and sworn to try the above entitled cause, find

for the plaintiff and assess her damages in the sum of \$1500.00.

Dated at Anchorage, Alaska, this 2nd day of February, 1955.

/s/ Robert W. Hayes, Foreman"

Wherefore, by virtue of the law and by reason of the premises aforesaid, it is hereby

Ordered, Adjudged and Decreed that judgment be and is hereby given in favor of the plaintiff, Catherine Brady, in the sum of \$1500.00 and that plaintiff shall have and recover from the defendant, plaintiff's costs and disbursements in this action incurred, to be taxed by the Clerk of the Court in the manner provided by law, and an attorney's fee in the sum of \$325.00.

Dated at Anchorage, Alaska, this 9th day of February, 1955.

/s/ GEORGE W. FOLTA,
District Judge

Acknowledgment of Service attached.

[Endorsed]: Filed February 9, 1955.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

Comes now the defendant above named and moves this Honorable Court to grant a new trial in the above entitled cause and for grounds for said motion states:

1. That the Court erred in instructing the jury that, "The utterance or publication of a false statement imputing unchastity or the commission of a crime such as prostitution is defamatory and slanderous in itself."

2. That the Court erred in giving instruction No. 6, for the reason that it is an incorrect statement of the law of damages resulting from a slanderous utterance which was not slanderous per se.

3. That the Court erred in permitting the case to go to the jury when there was no evidence produced by the plaintiff that the injuries of the plaintiff were the direct or proximate result of the slanderous utterance.

4. That the Court erred in denying defendant's motion for judgment in favor of the defendant when the plaintiff rested her case.

5. The Court erred at the commencement of the trial when it denied defendant's objection to the jury on the ground that it was not drawn from the panel of petit jurors in accordance with law.

The defendant moves this Honorable Court to set aside the judgment rendered and grant a new trial for all of the reasons above stated.

Dated at Anchorage, Alaska, this 14th day of February, 1955.

/s/ HAROLD J. BUTCHER,
Attorney for the Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed February 14, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: Buell Nesbett, Attorney at Law, and Catherine Brady, Plaintiff:

Notice Is Hereby Given, that the defendant herein, Myrtle Hollman, hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the Judgment granting to Catherine Brady, the plaintiff, the sum of \$1,500.00 together with attorney fees and costs; which judgment was filed of record on the 9th day of February, 1955, and defendant's Motion for New Trial having subsequently been denied on the 29th day of March, 1955.

Dated at Anchorage, Alaska, this 20th day of April, 1955.

/s/ HAROLD J. BUTCHER,
Attorney for the Defendant

Acknowledgment of Service attached.

[Endorsed]: Filed April 20, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Wm. A. Hilton, Clerk of the above entitled court, do hereby certify that pursuant to the provisions of Rule 10 (1) of the United States Court of Appeals, Ninth Circuit, the provisions of Rule

75 (g) (o) of the Federal Rules of Civil Procedure, and the designation of counsel for Appellant, I am transmitting herewith the Original Papers in my office dealing with the above entitled action or proceeding, together with the court reporter's transcript of all of the testimony taken at the trial of the cause.

The papers transmitted herewith are described as follows:

1. Complaint of the plaintiff.
2. Answer of the defendant.
3. Defendant's proposed instructions to the jury, (1 to 6).
4. Court's instructions to the jury. Exceptions to instructions in transcript of testimony, pp. 228 to 230, incl.
5. Verdict.
6. Judgment.
7. Motion for new trial.
8. Court's minute order of March 28, 1955 denying motion for a new trial.
9. Notice of appeal.
10. Order extending time to docket record on appeal.
11. Appellant's designation.
12. Reporter's transcript of testimony.

The papers herewith transmitted constitute the record on appeal from the judgment filed and entered in the above entitled action by the above entitled court on February 9, 1955, to the United

Whereupon, the Deputy Clerk proceeded to draw from the trial jury box, one at a time, the names of the members of the regular jury panel of petit jurors and counsel for both plaintiff and defendant examined and exercised their challenges against said jurors, until the jury of twelve jurors was complete. Thereafter, the following proceedings were had:

The Court: Do the parties agree that the case can proceed with less than 12 jurors should it become necessary to excuse any juror during the progress of the trial?

Mr. Butcher: —

Mr. Nesbett: By reason of illness?

The Court: Yes, or any other reason found sufficient by the Court.

Mr. Nesbett: I will so stipulate.

Mr. Butcher: I will also, your Honor. Your Honor, at this time I would like to raise a point in connection with the jury, information of which came to me during the proceedings this morning. I learned that the panel has been divided. The regular panel called for trial of cases has been divided and [3] half of them have been taken to the Presbyterian Church for use as jurors. Is that your understanding?

The Court: Yes.

Mr. Butcher: And I understand the method by which that division was made was based on taking every other name on the panel rather than by chance, as is the custom in drawing from the panel, so that at least half of the panel we have not had an opportunity by the laws of chance to get by drawing from

the jury box jurors for possible service and I wish the record at this time to record an objection to that procedure and take an exception to that procedure.

The Court: Well, of course, the objection is overruled, but you have your exception without even expressing it. The panel was purposely enlarged in order to take care of two courtrooms so it is inaccurate to say that you have been deprived of the full panel because you wouldn't have had them in the first place if only one court was operating.

Mr. Butcher: I understand in Judge McCarrey's court this morning there was barely enough to compose a quorum for the drawing of the jury.

The Court: So long as it is barely enough, it is enough. 24 is the statutory minimum and he had 26. I think there were 28 or 27 here.

Deputy Clerk: 27.

The Court: So that complies with the statute so far as [4] the minimum is concerned.

Mr. Nesbett: I thought that was what you were doing this morning, your Honor, before the jury was split—by drawing names by chance.

The Court: Certainly they were. The jurors here were drawn by chance, but what counsel has in mind is that he didn't have the benefit of the entire panel here.

Mr. Nesbett: I realize what he has in mind. I thought he took the names of the entire panel, put them in the box, and was split this morning before 10:00 o'clock.

The Court: I don't know about that. I had nothing to do with that. You may swear the jury then.

CHARLES BRADY

called as a witness for and on behalf of the plaintiff, and being first duly sworn, testifies as follows on

Direct Examination

Q. (By Mr. Nesbett): Your name is Charles Brady? A. Yes, sir.

Q. And are you married to the Plaintiff, Catherine Brady? A. Yes, sir.

Q. When were you married to Catherine Brady?

A. November 1949.

Q. And November 27, was it? A. Yes, sir.

Q. And what business were you engaged in at that time? A. Red Cab business.

Q. And what, if any, interest did you have in that company?

A. I think at that time I had one-quarter interest.

Q. One-quarter interest. Who held the remaining three-quarters interest, Mr. Brady?

A. Orville P. Wally.

Q. And how old are you? A. 33. [6]

Q. How long have you lived in Alaska?

A. Since '41, except for my time in the Army.

Q. How long were you in the Army?

A. 3 years.

Q. Where did you serve in the Army?

A. Part of the time in California and in Europe.

Q. Which Army were you in?

A. Third Army.

Q. General Patton's Army? A. Yes.

Q. Did you receive any decorations?

(Testimony of Charles Brady.)

A. Yes.

Q. In the military service?

Mr. Butcher: Your Honor, I object to going into——

The Court: Objection sustained.

Q. Now, Mr. Brady, getting back to the cab business. Was Catherine Brady, your wife, working for the Red Cab Company in November—November 24, 1951

A. Yes.

Q. And what was her position?

A. Well, she was dispatching and taking care of the books.

Q. All right. And what did you do with respect to Company duties?

A. Well, I drove and I managed the company most of the time.

Q. And, now, as of November 1951 Mrs. Hollmann had an interest in the company, did she not?

A. Yes, she has had one ever since we have had it.

Q. And who else owned an interest in the company?

A. Sam Mealey.

Q. Now, drawing your attention to November 24 of 1951, I will ask you whether or not the partners held a meeting with respect to company business?

A. Yes, sir, they did.

Q. Where was this meeting held and at what time of the day?

A. It was held at Mrs. Hollmann's place at approximately 3:00 to 4:00 o'clock.

Q. 3:00 or 4:00 o'clock?

(Testimony of Charles Brady.)

A. In the afternoon.

Q. And who was present?

A. Sam Mealey, Myrtle Hollmann and myself.

Q. What was discussed at this meeting, Mr. Brady?

A. We were talking about incorporating.

Q. Go ahead.

A. And they had passed a law at that time that we had to have all company owned cars, so we had to incorporate to get our cars all in the company name.

Q. Now, were you in favor of incorporating or not? A. Yes.

Q. Was Mr. Mealey in favor of incorporating?

A. Yes.

Q. How did Mrs. Hollmann stand on that matter? [8] A. She didn't want to.

Q. Now, how long did this discussion take place?

A. Well, we were there about an hour.

Q. What happened? Did the discussion break up?

A. Well, she got angry. She figured that——

Mr. Butcher: I object to anything she figured, Your Honor, as being beyond the ability of this witness to testify to.

The Court: Well, I don't think I can sustain the objection even though he uses the expression "figured" because I imagine that he uses it in the sense that people often do carelessly to mean that he judges that she did so and so by saying so and so.

(Testimony of Charles Brady.)

Mr. Butcher: He may——

The Court: I don't think he is merely guessing at it.

The Court: He certainly can't say what he believed or what he judges or figured.

The Court: You understand you are not allowed here to guess but when you speak that you figure that somebody wanted to do so and so your testimony must be based on what that person said, not on guessing on what the person had in mind.

A. She had the idea that——

Mr. Butcher: I object to any idea she had, Your Honor. I want the witness to testify to anything she did or said and nothing else. [9]

The Court: All right. I have instructed him if it is a case of judging what her thoughts were he wouldn't be allowed to say what she thought. You can only say what idea somebody had on the basis of what that person said, not on what you guess.

Q. (By Mr. Nesbett): Well, I will put this question. What did Mrs. Hollmann say regarding incorporating, in general?

A. She said that Sam and I was trying to get together to take over the company.

Q. Did she explain what she meant by "take over the company"?

A. Well, that we would operate it without her having anything to say about it.

Q. Well, how did the discussion progress? Did you get anywhere in that respect?

A. No, we did not.

(Testimony of Charles Brady.)

Q. What happened?

A. She got angry and there were a few words said back and forth and she said, "You are not so smart"—she said, "You have got a whore for an ex-wife."

Q. You mean ex-whore for a wife?

A. Yes.

Q. What else did she say in that connection?

A. Well, she said that she was supposed to be from Butte, Montana, and she worked with a girl by the name of June.

Q. Did she say that to you when she was angry at you? [10] A. Yes.

Q. And what did you say, if anything?

A. I said, "What did you say," and she said it again only not quite so mad.

Q. Pardon me.

A. And we left right after that.

Q. What do you mean?

A. I and Sam Mealey.

Q. Was Sam Mealey standing there so he could hear that remark too? A. Yes.

Q. Mr. Brady, you had been married to Catherine Brady, according to the testimony, then almost 2 years at that time, hadn't you?

A. That is right.

Q. This incident that you have testified to occurred, I believe you said, on November 24, did it not? A. Yes, sir.

Q. Your wedding anniversary was to have been November 27? A. Yes.

(Testimony of Charles Brady.)

Q. Well, now after you and Sam Mealey left what did you do?

A. Well, I and Sam went out to the Stage Coach and had a cup of coffee and talked about it a little more there and then I went home.

Q. What did you do when you got home? [11]

A. Well, I didn't do anything right away. I didn't know just what to do. I was still kind of—I didn't know whether to tell her. I knew there would be some argument if I told her, but I did. I was home about half an hour and I told her about—I asked her if she had ever been to Butte, Montana, and she said no, so I asked her a couple of times if she had been to Butte, Montana, and she still said no and she asked me what was the matter so I told her.

Q. What did you tell her?

A. I told her what Mrs. Hollmann had told me and I asked her if it was right and she said, "No, it wasn't."

Q. Did any other conversation take place between you regarding——

Mr. Butcher: I object to any conversations that took place between Mr. Brady and his wife not in the presence of the defendant, Your Honor.

The Court: Objection sustained.

Q. (By Mr. Nesbett): What was done then? What else was done between you and your wife?

A. Well, nothing right then.

Q. Did she do anything?

A. Oh, she was crying.

(Testimony of Charles Brady.)

Q. Did you stay at home for dinner that evening? A. Yes.

Q. Did you stay at home all the rest of the evening? [12] A. No.

Q. What did you do then?

A. I went out and had a few drinks.

Q. What time did you get back home?

A. Sometime late morning.

Q. Late or early? What time was it, roughly?

A. About 6:00 or 7:00 o'clock in the morning.

Q. What happened then?

A. Well, I went to bed.

Q. Was your wife waiting for you when you came home? A. Yes, she was up.

Q. Did anything of unusual nature happen?

A. Oh, we had a little argument then.

Q. Did you call her any names?

Mr. Butcher: I object to any names he might have called her.

The Court: I didn't hear the question.

Mr. Nesbett: I asked if he called her any names.

The Court: This doesn't seem to be connected with the allegations of the complaint. The objection will have to be sustained.

Mr. Nesbett: Your Honor, now here is the point in this thing: We are going to have to show that this lady suffered, was damaged, and if I can't introduce evidence of this kind—why shouldn't I be permitted to if that is what happened? Let [13] the jurors decide.

The Court: Well, I am inclined to think that

(Testimony of Charles Brady.)

you would be limited to showing there was marital discord or worse, if that happened to be the fact, but not particularly what was said.

Mr. Nesbett: I didn't say that, Your Honor. He can answer it yes or no. I asked "did you call her any names" and he could say yes or no.

Mr. Butcher: I am going to object to that on the same grounds, Your Honor. If he called her any names he is saying so. Now, that would be self-serving and it would be outside the presence of the defendant.

Mr. Nesbett: It would be self-serving if it occurred before the suit was filed, Your Honor.

Mr. Butcher: I think Mr. Nesbett is limited to show any suffering that might have been inflicted upon her by virtue of the statement; not any punishment inflicted upon her by her husband.

The Court: I think the court will have to adhere to the ruling, while you may show what followed in the way of consequences, such as, marital discord, that you may not show it by the words of what was said between them.

Q. (By Mr. Nesbett): Let me ask you this, Mr. Brady. Did an argument occur when you came home that morning? A. Yes, sir. [14]

Q. And what was the cause of that argument?

A. Well, she asked me why I was out drinking.

Q. Well, why had you been out drinking?

A. Well, I just—nothing much else to do, I guess, right then.

(Testimony of Charles Brady.)

Q. I will ask you whether or not this matter was preying on your mind?

A. Well, it was, yes.

Mr. Butcher: Your Honor, we are not here to show this man was suffering. We are here to show his wife was suffering and his suffering has got nothing to do with this case. He is not suing for his suffering.

Mr. Nesbett: Your Honor, if it affects this man's conduct and caused him to do the things that I am going to show he did, she suffered. He is just an instrument of proving the case, as far as I am concerned.

The Court: That is true, except he has already answered he doesn't know why he stayed out all night, so on the basis of that answer the objection would seem to be well taken.

Mr. Nesbett: I will ask him a further question then.

Q. Did you in this argument discuss the statement that Mrs. Hollmann is supposed to have made to you the evening previously?

Mr. Butcher: I will have to object on the ground it is leading, Your Honor. This witness must be able to testify in [15] support of the case by his own testimony, not by Mr. Nesbett.

The Court: Yes, you may ask him whether they had trouble or arguments or altercation as a result, but in view of the objection, why, you shouldn't lead him by questions of the kind that would direct

(Testimony of Charles Brady.)

his attention to some particular argument until he shows he is unable to recall it.

Mr. Nesbett: He is a difficult witness. As pointed out he didn't want to come in the case and you can see he is holding back and is reluctant.

Mr. Butcher: I object to that. He is stating exactly what Mr. Nesbett wants him to say.

The Court: I don't believe that on the basis of the present showing he is hostile to the extent to permit you to cross examine. If you can make that showing you can cross examine, but in view of the relation between him and the plaintiff it is almost incredible that there would be hostility.

Mr. Nesbett: I didn't mean to intimate hostility. I said he was a reluctant witness.

The Court: Well, of course, if a witness is reluctant he may be cross examined, but the trouble here is that the claim of reluctance is one that seems very unusual in view of the relationship between them.

Mr. Nesbett: All I have to do is invite Your Honor's attention to his attitude.

The Court: I think you better proceed in examining him [16] as though he were not reluctant, but if it develops that he is then the question may be re-argued.

Mr. Butcher: May I say something, Your Honor. If Your Honor please, this witness is not reluctant. He has been prepared to answer every question and has been stopped only by my objections. He has been prepared every time Mr. Nesbett asked him

(Testimony of Charles Brady.)

questions to answer them and I have been the one that stopped him. I am the one that is reluctant to let him testify because I want him to testify to the facts.

The Court: I have already held I cannot hold he is reluctant at the present time.

Q. (By Mr. Nesbett): Mr. Brady, I will ask you whether or not on this morning, that you returned home after drinking, you abused your wife, Catherine Brady?

A. How do you mean "abused"?

Q. Did you abuse her in any fashion?

A. We had an argument, yes.

Q. Concerning this statement of Mrs. Hollmann?

A. We had an argument concerning the statement that was said the night before.

Q. What else was done, if anything?

A. I don't think anything else was done. There was an argument there and that is—I guess I told her she could leave.

Q. You did, didn't you? [17] A. Yes.

Q. Well, then what did you do?

A. I went to bed.

Q. Did you have any arguments in the weeks that followed over this same matter?

A. Yes, we had arguments off and on.

Q. And it is a fact, isn't it, that those arguments were usually the result of your bringing this subject up——

Mr. Butcher: I object.

(Testimony of Charles Brady.)

Mr. Nesbett: Let me finish the question.

Mr. Butcher: Your question is leading.

Q. After you had been drinking?

The Court: I don't recall now the form of the question. Do you still insist on your objection?

Mr. Butcher: I would like to have it read then I can pass on it.

(Thereupon, the reporter read Question Line 7 above.)

Mr. Butcher: I will withdraw my objection.

Q. (By Mr. Nesbett): Now, were they?

A. Yes.

Q. And concerning this same statement that Mrs. Hollmann made to you? A. Yes.

Q. Mr. Brady, going back to this meeting that took place in [18] Mrs. Hollmann's home. Was Mr. Carl Hollmann there at that meeting?

A. Yes, he came in right after that was said.

Q. After Mrs. Hollmann made the remark to you about your wife? A. Yes.

Q. And did you tell him what Mrs. Hollmann had said?

A. Yes, he was told what was said. I don't remember if I told him or not, but he was told.

Q. Did he have anything to say?

Mr. Butcher: Who are you talking about?

Mr. Nesbett: Carl Hollmann.

Mr. Butcher: Carl Hollmann is not a party to this action.

Mr. Nesbett: Mrs. Hollmann is.

Mr. Butcher: Whatever he said is——

(Testimony of Charles Brady.)

The Court: That is true. I don't remember, however, what the last question was. Will you repeat the last question.

(Thereupon, the reporter read Question Line 9 above.)

The Court: Well, of course, that can be answered yes or no.

Q. (By Mr. Nesbett): And it was in the presence of Mrs. Hollmann, wasn't it?

A. What was that again?

Q. Carl Hollmann was told in Mrs. Hollmann's presence, I believe you said, what she told [19] you?

A. Yes.

Q. What did Mr. Hollmann say, if anything?

Mr. Butcher: I object, Your Honor, as not being said in the presence of Mrs. Hollmann.

The Court: He just indicated and so has the witness that the defendant was present.

Mr. Butcher: I didn't understand that.

Mr. Nesbett: I went back to the meeting in Mrs. Hollmann's home on November 24.

Mr. Butcher: And was Mr. Hollmann present. Is that your question?

Mr. Nesbett: The defendant was, Mr. Butcher. He came in after the meeting had practically broken up and was told what Mrs. Hollman had told Mr. Brady, and this occurred in her presence.

Mr. Butcher: I withdraw any objection I had.

Q. (By Mr. Nesbett): What, if anything, was said by Mr. Hollmann?

(Testimony of Charles Brady.)

A. He said, "You shouldn't have said that," or something to that effect.

Q. Did Mrs. Hollmann make any reply?

A. She said she could prove it.

Q. Was any other discussion had concerning her statement?

A. No, I think that was about it for the night—for that night. [20]

Q. Then you went on home and asked your wife about it, is that correct? A. Yes.

The Court: We will recess at this time. Ladies and gentlemen of the jury, I think you have heard, either in connection with previous cases, but particularly in connection with this case the admonition given to the jury just before noon about talking concerning the case. I wish you would bear that admonition in mind at all times. The court will recess for 10 minutes.

(Whereupon, at 3:16 o'clock p.m., following a 10-minute recess, court reconvenes and the following proceedings were had:)

The Court: You may proceed.

Mr. Nesbett: Did Your Honor rule that I couldn't ask Mr. Brady whether or not he abused his wife verbally the morning—

The Court: No, I didn't rule. I said you can show anything of that kind, but not by having him repeat the exact words that were said.

Mr. Nesbett: Yes, sir.

Q. (By Mr. Nesbett): I will ask you whether

(Testimony of Charles Brady.)

or not you did abuse your wife on the morning after the day that you heard this statement?

Mr. Butcher: I object, Your Honor, on the ground he did put that question to him and he answered it.

Mr. Nesbett: I don't recall it. [21]

The Court: Yes, he did. He answered it, I am sure. He might have used the word abused. He indicated some uncertainty as to its mention, but he answered the question yes. You did ask him.

Mr. Nesbett: There was an objection made and your ruling is he can't answer it, Your Honor?

The Court: That is the objection, yes, and the court——

Mr. Nesbett: What was the answer?

The Court: You will have to ask the reporter.

Q. (Mr. Nesbett): All right. Did anything else happen on that morning, Mr. Brady?

A. Well, I told her she could leave.

Mr. Butcher: He told that, Your Honor. This is repetitious and not proper at this time.

The Court: Yes, he has already said that.

Q. All right. Mr. Brady, I will ask you whether or not any other arguments of family difficulties arose during the following weeks and months in connection with this statement of Mrs. Hollmann?

A. Yes, there were arguments from then on.

Q. And what was the general nature and outcome of those arguments?

A. Well, there were always arguments—you

(Testimony of Charles Brady.)

would call them—and usually happened when I was drinking. [22]

Q. And with respect to your drinking habits. After this statement was made did they increase?

Mr. Butcher: Your Honor, whatever this man's habits and however they changed as a result of this has nothing to do with the issues of this case and I object to any such testimony.

The Court: I think in view of the objection of counsel that the question is leading. That the way he should go about it is to ask him what effect this had on him and let him tell. He ought to know whether he increased his drinking and things of that kind as a result of it.

Mr. Nesbett: Your Honor, he is the kind of witness that will give you one short sentence for an answer and I have to keep probing. All right, I will ask that question.

Q. What effect, if any, did this statement of Mrs. Hollmann's have upon your marriage after November 24? Tell us without quoting exact words which might have passed between you and your wife. Tell us the effect.

A. Well, I went out drinking more than I used to and usually every time after I had been drinking we had an argument. That is usually the time I got to thinking about it the most, I guess.

Q. Let me ask you, did you believe that statement Mrs. Hollmann made to you?

A. Well, I didn't know whether to believe it or

(Testimony of Charles Brady.)

not. I had known my wife about 4 months before I got married. [23]

Q. Now, you had been married 2 years, hadn't you, at the time the statement was made to you?

A. Yes.

Q. Was that a happy 2 years? A. Yes.

Q. And do you know whether or not these arguments that resulted had any effect on your wife's health?

A. Yes, she got nervous and left me in 3 months.

Q. Was she placed under a doctor's care before she left you? A. She was.

Q. Which doctor was she going to?

A. I don't remember what doctor it was.

Q. Do you know what general treatments, in general?

A. She was getting pills for being nervous. Then she had trouble with her heart.

Q. Did she have a heart attack? A. Yes.

Q. Do you know when that occurred?

A. I don't remember offhand.

Q. Did it occur after these arguments commenced?

A. Yes, it occurred just before she went Outside, not long before she went Outside.

Q. Now, did you ever talk with the defendant, Myrtle Hollmann, at any later time about this statement she made to you at the meeting? [24]

A. Well, not very much. There was one time, I think, over at the house.

Q. Which house? Her house?

(Testimony of Charles Brady.)

A. Myrtle's house. We had another argument. It wasn't too much, but she called me a crook that time, and I think Carl was there at the time and he said she shouldn't say that or something to that effect and I said, "Well, it doesn't make any difference. She has talked about Katy too," so she said, "Yes, and I can back it up too."

Q. Did Carl say anything? A. No.

Q. Well, Mr. Brady, however, between November 24, the date she made the statement to you and the date that Mrs. Brady left you did you talk with Myrtle Hollmann about the statement?

A. Well, I don't know if it was just before Katy left or right after she left, but it was right about that time.

Q. Where did that conversation with the defendant take place?

A. That was the same one I just got through talking about.

Q. Well, did you discuss the thing with her at any other time, the statement I mean?

A. Well, I think there was something said, but I can't remember right offhand what it was. It was never through an argument. It was just talking.

Q. I will ask you whether you did discuss it with her at any other time other than the 2 times you have mentioned? [25]

A. No, not that I know of.

Q. Did your wife, Catherine Brady, tell you she was going to commence a suit against Mrs. Hollmann?

(Testimony of Charles Brady.)

A. She said, yes, she was going to sue, but I didn't want her to.

Q. Don't quote her word for word.

Mr. Butcher: I object to the question. The evidence speaks for itself. The pleadings speak for themselves. She did in fact file a suit and that is the best evidence. Whatever she said to him or he said to her about filing the suit has nothing to do with the issues of this case.

The Court: Objection sustained.

Q. (By Mr. Nesbett): Did you know she was going to file a suit? A. No.

Q. Now, actually Mrs. Hollmann was your mother-in-law at one time, was she not?

A. Yes, sir.

Q. You had married her daughter some years ago? A. Yes, sir.

Q. And you have one child by that marriage, didn't you? A. Yes.

Q. And then you divorced your first wife?

A. Yes.

Q. You had occasion to see Mrs. Hollmann frequently, didn't you? [26]

A. When I came out of the Army we went into partnership, yes.

Q. And she worked out of the cab stand as dispatcher, did she not? A. Yes.

Q. How did you get along with the defendant, Mrs. Hollmann? A. Fine.

Q. After you went into business did you have frequent arguments?

(Testimony of Charles Brady.)

A. No, we never had no arguments until, I think, about the time that I got married.

Q. When you married Catherine Brady?

A. Yes.

Q. Well, do you know why the arguments with Mrs. Hollmann commenced after your remarriage to Mrs. Brady?

Mr. Butcher: I am going to object to arguments that have nothing to do with this case.

The Court: Yes, unless——

Mr. Nesbett: Well, the arguments I am talking about, Your Honor, are arguments after his marriage to Mrs. Brady and bear upon the relation between Mr. Brady and Mrs. Hollmann.

The Court: Well, undoubtedly it may show something of their relationship, but how could that be relevant here? That is what isn't clear to me.

Mr. Nesbett: Well, I propose to show that after he had divorced Mrs. Hollmann's daughter and married Mrs. Brady, Mrs. Hollmann's attitude toward Mr. Brady changed and there was [27] malice in her heart against Catherine Brady.

The Court: Well, if she had made these slanderous remarks as alleged against him instead of against his wife, why, the relationship between the two of them would be pertinent, but I can't see, without more, how the relationship would be relevant in the trial of this case.

Mr. Nesbett: I still insist, Your Honor, that if the relationship between Charles Brady, her former son-in-law, and herself had deteriorated after his

(Testimony of Charles Brady.)

marriage to Catherine by reason of that marriage there would be some basis for malice, for her having made the remark to him that she did.

The Court: You mean if their relations had deteriorated she would take advantage of occasions such as this to say something slanderous about his wife. Is that your position?

Mr. Nesbett: Yes, sir.

The Court: I don't know that that is entirely logical. It doesn't necessarily follow that because a person has some ill feeling towards another one that he would, therefore, utter some slanderous remarks about a third person.

Mr. Nesbett: Of course, the third person is his wife. It may not necessarily follow, but the jury could at least consider it with any other evidence and draw their own conclusions.

The Court: But, on the other hand, as I see it, malice is not an element here.

Mr. Nesbett: Well, it certainly would go to damages, I [28] would consider, Your Honor.

Mr. Butcher: If your honor please, this question has been asked generally how he got along with Mrs. Hollmann and his answer was "fine." I think he answered the question. Special arguments have nothing to do with the case.

Mr. Nesbett: The record will show he got along fine until he married Catherine.

The Court: I don't know to what period he was referring when he said he got along fine with her, so I am unable to pass on that objection with-

(Testimony of Charles Brady.)

out checking the notes, if it is that important. But what is the question now? Is there any question?

Mr. Nesbett: I will put that question, how did you get along with Mrs. Hollmann.

Mr. Butcher: I will withdraw my objection.

The Court: But at what time, for what period.

Mr. Nesbett: I was trying to repeat it the way it actually happened. He said, "Fine until he married Catherine."

Mr. Butcher: He didn't say that. He said fine until the arguments over the business, not until he married Catherine. He didn't say that. I stand on the record.

The Court: Well, I don't recall. Do you insist that the answer was different from what counsel says it was?

Mr. Nesbett: Yes, Your Honor. Well, let me put this question—he says he withdraws his objection to this line of questioning. [29]

Q. (By Mr. Nesbett): After you married Catherine was there any change in your relationship with Mrs. Hollmann?

A. Yes, there was a change. It didn't come all at once. We just seemed to get farther and farther apart and started working against each other, more or less, I guess.

Q. Well, now when did your wife, Catherine, leave you?

A. It was about the first of March.

Q. Did you know she was going to leave?

A. No, I didn't.

(Testimony of Charles Brady.)

Q. Did you observe the condition of her health during the period December, January, February until she left?

A. Well, I knew she wasn't feeling too good. She was nervous.

Q. Do you know whether or not she lost any weight? A. Yes, she lost some weight.

Q. Now, at the time Mrs. Hollmann made this statement to you on November 24 did she call you to one side of the room and——

Mr. Butcher: I object to——

Q. ——and tell you in a confidential tone of voice——

Mr. Butcher: I object as leading. It might be in the nature of rebuttal, but it hasn't been testified to by Mrs. Hollmann.

The Court: If it is a question concerning the defendant's version of this, as disclosed in the opening statement, why, it is anticipating the defense. I don't think you have to rebut any [30] defense.

Mr. Nesbett: All right.

Q. (By Mr. Nesbett): Sam Mealey was present, was he not? A. Yes.

Mr. Butcher: That has been asked and answered, Your Honor.

Q. Now, how long did your wife stay away?

A. Just about 3 months.

Q. And when did she come back, the month?

A. Well, it was towards the end of May.

Q. Of 1952? A. 1952.

Q. Did you go back together? A. Yes.

(Testimony of Charles Brady.)

Q. And do you know why she came back?

A. Well, I called her up and asked her if she wanted to come back.

Q. And have you been getting along all right since she got back?

A. We still have our arguments. It is brought up every once in awhile.

Q. What is brought up?

A. Oh, about her being called a whore.

Q. Where are you living now, Mr. Brady?

A. Kenai. [31]

Q. And your wife is living there, is she?

A. Yes.

Mr. Nesbett: I believe that is all.

CHARLES BRADY

testifies as follows on

Cross Examination

Q. (By Mr. Butcher): Mr. Brady, you wouldn't have the jury believe that you started drinking after this statement was made and you didn't drink before that time?

A. No, I have always drank a certain amount. but I did drink more after that.

Q. You have always drank pretty heavily. haven't you?

A. I drank heavily when I came out of the Army. I drank heavy until I was married, fairly heavy.

(Testimony of Charles Brady.)

Q. Your first marriage or your second marriage? A. Second marriage.

Q. You drank heavy during all the period of your first marriage?

A. Quite a bit of it, yes.

Q. And you drank heavily up to and including the time of your second marriage. Is that what your testimony is? A. Yes.

Q. And then would you have us believe that you stopped drinking?

A. I didn't stop drinking. I didn't drink very much. [32]

Q. But you drink a little every day?

A. I wouldn't say every day, no.

Q. Most days?

A. I might have drank every day and lots of time I went a week without a drink.

Q. Did your second wife, Mrs. Brady, have any objection to your drinking? A. No.

Q. Did you ever quarrel over your drinking?

A. No.

Q. After you married Mrs. Brady and during the period when she went Outside to receive medical treatment isn't it a fact she went to the hospital and had an operation for cancer?

A. That who went to the hospital?

Q. Mrs. Brady, your wife? A. No.

Q. That is not true?

A. That is not true.

Q. Isn't it a fact she went to the hospital and had her breast removed?

(Testimony of Charles Brady.)

A. That is not true, not at that time.

Q. When was it?

A. That was—well, at the time she had her breast removed her father was awfully sick and she went out to——

The Court: He is just asking you when it was. You [33] don't have to state the exact date, but state it as near as you remember.

A. Well, I am not sure when it was. I think it was in '50 right after we were married.

Q. It was at least after you were married, is that not correct? A. Yes.

Q. She had to go out for a period of time for medical treatment, is that correct? A. Yes.

Q. And that from the time you were married until you had this argument with Mrs. Hollmann there was a period in which you believe she was absent for a period of several months, is that correct?

A. Well, she was—I think she was gone about 6 weeks.

Q. And on that occasion she had an operation for cancer? A. Yes.

Q. And was she quite ill?

A. Well, she was ill when she went out and awfully weak when she came back. She just got permission to get on the plane and come back.

Q. Are you certain she made 2 trips out and stayed several weeks on each occasion?

A. Yes.

Q. And can you state positively that the time

(Testimony of Charles Brady.)

she went out for the operation was not the time after November 1951? [34]

A. When she left me in March she did not go out to have an operation.

Q. What did she go out for?

A. She just left me. She went to Oregon and then to California and to Reno. The time when she had her operation she went to New York.

Q. She didn't leave you on that second occasion because she was sick? A. No.

Q. Now, you state that there were times when you believed this statement and at other times when you didn't believe it, is that correct?

A. Well, I really didn't know what to believe.

Q. Well, did you have faith in your wife?

A. Yes, to a certain extent. It makes you start to think.

Q. Was there ever a time when you didn't believe it?

A. I guess—usually when I got to drinking I got to wondering.

Q. That was pretty much?

A. Quite often.

Q. Each time you would get to drinking then you would lose faith in her, is that correct?

A. Yes.

Q. Did you have any occasion to lose faith in her other than this statement?

A. No, I didn't. [35]

Q. When were you married, Mr. Brady?

A. November 1949.

(Testimony of Charles Brady.)

Q. Where were you living at that time?

A. At the Pioneer Apartments.

Q. You had an apartment there?

A. Yes.

Q. Now, isn't it a fact, Mr. Brady, that the reason you didn't have faith in Mrs. Brady is because you had lived with her for 3 months before you married her, in that apartment?

A. I didn't live with her before she——

Q. How long did you live with her?

A. We might have lived together for 6 weeks, but that is not the reason I didn't have faith in her because we had intended to get married anyway.

Q. That didn't have any bearing at all in your lack of faith in her? A. No.

Q. Did you ever think of that when you lost faith in her? A. No.

Q. Now, Mr. Brady, during the period that you were married to your first wife, Mrs. Hollmann's daughter, you got along with Mrs. Hollmann fine?

A. Yes, we got along together.

Q. And even after you and the first Mrs. Brady were separated you still got along with Mrs. Hollmann fine, did you not? [36] A. Yes.

Q. She showed no animosity towards you as a result of your divorcing her daughter, is that correct?

A. Are you talking about Mrs. Hollmann or Mrs. Brady?

Q. Mrs. Hollmann. A. No.

Q. And when you, she and Mr. Mealey went

(Testimony of Charles Brady.)

into the cab business, purchased the Red Cab business, you were then divorced from the first Mrs. Brady, were you not?

A. Yes, I was divorced as soon as I was out of the Army.

Q. And the 3 of you purchased the Red Cab business together, is that correct?

A. I and Orville Wally and Myrtle Wally purchased it.

Q. And the 3 of you were partners at that time?

A. Yes.

Q. And you continued to operate the business up to and including the time you were married, is that correct?

A. Yes.

Q. Now, calling your attention to the occasion of this discussion regarding incorporation of the company. You had on several other occasions discussed incorporating, had you not?

A. Yes, it had been talked about since the City had put the ordinance through.

Q. And you eventually were incorporated, were you not? [37]

A. Yes.

Q. At what date were you incorporated, if you remember?

A. July 1, 1952.

Q. July 1, 1952, approximately 6 to 8 months after this discussion.

A. I believe June 8 was the date of the incorporation.

Q. June 8 and Mrs. Hollmann was one of the incorporators of that incorporation, is that correct?

(Testimony of Charles Brady.)

A. Well, I am not sure if it was her or Carl that had the name on the papers.

Q. But at that time there was friendly relations existing between you, were there not?

A. Well, business relations.

Q. There were business relations?

A. Yes.

Q. And during that period of time your wife was employed as dispatcher, was she not?

A. That is right.

Q. Was she employed as dispatcher and book-keeper on November 24, 1951; the occasion of this discussion?

A. Well, I don't know as there was a book-keeper for the Red Cab at that time. She was keeping books at that time for I and Sam Mealey, I believe, and I don't remember if she was dispatching at that time or not.

Q. Did you and Sam Mealey have business independent of the [38] Red Cab Company?

A. All 3 of us were interested more or less. We each had our own cars and I and Sam did have some cars together because we wanted to put them together.

Q. You were in the Red Cab Company, were you not? A. Yes.

Q. Mrs. Hollmann was a partner in that company? A. Yes.

Q. You were all in it together? A. Yes.

Q. And Mrs. Brady, the present Mrs. Brady

(Testimony of Charles Brady.)

was employed taking care of some books for that company?

A. No, she wasn't taking care of the books for the company. There were no books to take care of—yes, there was, for the dispatchers, yes.

Q. And that was November 24 or near about that time of 1951? A. Yes.

Q. And she continued to take care of the books, did she not, and serve as dispatcher?

A. Well, I think from that time on I don't think there was much books kept for the Red Cab because I believe we made all the dispatches.

Q. The books are available, aren't they?

A. I don't know. I don't know where they are.

Q. There were books kept at that time? [39]

A. Not on Red Cab.

Q. Do you mean to say that you kept no books on the Red Cab?

A. We each kept our own individual books.

Q. And the partnership didn't keep books?

A. No.

Q. Not even dispatchers books?

A. No, I paid all the dispatchers myself. It would be in my books.

Q. Did the Red Cab Company file partnership income tax returns?

A. No, we filed our own separate.

Q. There was no partnership income tax returns filed during that period? A. No.

Q. Are you sure of that?

(Testimony of Charles Brady.)

A. There was, but there was no profit—just a partnership return.

Q. The partnership showed no profit, is that correct? A. That is the way it was.

Q. But individually you filed a return, is that correct? A. Yes.

Q. And you showed it as individual profit and not as partnership profit? A. Yes.

Q. Well, now if you didn't keep any books on the Red Cab Company [40] how did you know whether you were losing money or making money?

Mr. Nesbett: Your Honor, I can't see any point in that. That isn't an issue of the case as far as I know.

Mr. Butcher: We are going to show, Your Honor, by producing the books that during all this period of time Mrs. Brady was employed as dispatcher and taking care of the books she was paid for it and that the books will reveal that.

The Court: If the books show that I suggest that maybe that can be stipulated to.

Mr. Butcher: Well, the point is we want to establish that fact during the period of time after this slanderous phrase was supposed to have been uttered when she and Mr. Brady were having trouble and she became ill and we want to show that during that period of time she was continuously employed.

The Court: Well, that may be, but if you can stipulate to it, why, that would be preferable.

Mr. Nesbett: I will stipulate to that.

(Testimony of Charles Brady.)

Mr. Butcher: I am satisfied. I will stipulate to that, yes.

Q. (By Mr. Butcher): Now, calling your attention to the discussion itself, at the time of the meeting, had you and Sam on that date been keeping the profits earned by Red Cab Company to yourselves as individuals and filing returns on it? [41]

A. We kept the profits of the cars that belonged to us, each one of us, the same as Mrs. Hollmann did.

Q. Did you pay over to Mrs. Hollmann any part of the earnings on your one-third of the business?

A. No, I didn't.

Q. Or did Mr. Mealey?

A. No, he didn't.

Q. Or did you account to her for your earnings?

A. No, and she didn't account to us either.

Q. Well, all right. Then you were requesting her to enter into a corporation with you?

A. Yes.

Q. And she began to raise certain questions about the propriety of the corporation as differentiated from the partnership, did she not, in this discussion you had?

A. Yes, that was the general argument.

Q. Was there a discussion about your wife's employment during that discussion? A. Yes.

Q. That was discussed? A. Yes.

Q. Now, did you know a woman by the name of Marie Cox? A. Yes.

Q. Was her name mentioned in this discussion?

(Testimony of Charles Brady.)

A. No, it wasn't. [42]

Q. Isn't it a fact, Mr. Brady, that Mrs. Hollmann said to you, "Charles, Mrs. Cox has seen your wife in here and has told me that she used to be on the line or was a whore in Butte, Montana, and I think you ought to know about it"? Didn't she say words to that effect?

A. No, she didn't put it that way.

Q. Had you been drinking that day?

A. No, I hadn't.

Q. That is one of the days you didn't drink?

A. No. I did later on, but not yet that day.

Q. You did when you went down to the Stage Coach Inn, is that correct?

A. No, I didn't drink when we left the house. I didn't drink until later on in the evening.

Q. In any event you state you hadn't had a drink? A. No.

Q. Now, do you have a distinct recollection of what Mrs. Hollmann told you? A. Yes.

Q. And didn't she in that statement say something about Mrs. Brady's employment in the business? A. No.

Q. Then in what manner did you discuss Mrs. Brady and her employment?

A. I said that Katy was a good dispatcher and there was always [43] arguments on that because Myrtle was as good as she could be, but she was slow on that board and that is when she got mad and told me that my wife was an ex-whore and

(Testimony of Charles Brady.)
when she did she was mad because her eyes were shining.

Q. Did her eyes always shine when she looked at you?

A. They shined a little harder that night.

Q. Did she regard you as a son in a great many ways?

A. I got along good with Myrtle up until I got married.

Q. You got along good with her after you got married, didn't you? A. For awhile.

Q. Isn't it a fact for several years she has taken care of your child?

A. Yes, she has taken care of my child off and on. I would as soon have the child myself if I could get her, but Myrtle has taken care of her.

Q. How many years are you behind in payments for the child? A. How many years?

Q. Yes, how many years would you say offhand you are behind in payments?

A. I might be behind 4 months.

Q. Isn't it a fact you are behind at least 2 years? A. No.

Q. You know that for a fact?

A. I am pretty sure of it. Her mother is in the house here. [44]

Q. We expect to call her. Now, Mr. Brady, when you would go get drunk and then lose your faith in Mrs. Brady then you would come home and give her a bad time and abuse her, is that correct? A. Well, yes, I believe so.

(Testimony of Charles Brady.)

Q. Was anybody else abusing her besides you?

A. No.

Q. Was she abusing herself?

A. Well, I don't—I suppose she was worrying all right, if that could be——

Q. When you would go off and get drunk and stay away all night would it cause her any concern?

A. Well, it probably did.

Q. And would she speak to you about it?

A. How do you mean?

Q. When you would go away and wouldn't come home all night and be drunk wouldn't she say something to you about it? A. Yes.

Q. Wouldn't you have an argument about it?

A. Yes, there were arguments.

Q. She didn't approve of you doing that, did she? A. No, she didn't.

Q. As a matter of fact, you had several nasty arguments over your drinking, did you not?

A. It wasn't all over the drinking. [45]

Q. What else were you doing that she argued——

A. It wasn't me that was doing it. It was just over the drinking, over the statement that was said and over whether she was or not.

Q. You said you had arguments over the statement and you had arguments over drinking. Did you have arguments over anything else?

A. No.

Q. Did you have arguments over your child?

A. No.

(Testimony of Charles Brady.)

Q. Did you have any arguments down in Kenai since you have moved down there?

A. We had some, yes.

Q. Are they over your drinking?

A. Yes.

Q. What else were they over?

A. Over my running around and drinking.

Q. Did you threaten to go down there and shoot her on one occasion? A. No.

Q. You never made a statement to anyone that you were going to do that? A. No, I didn't.

Q. You never made such a statement?

A. No. [46]

Q. Do you know a man by the name of Mr. Barger? A. Mr. Barger?

Q. Yes. A. Yes, I do.

Q. Before I ask you that question, isn't it a fact that you and Mrs. Brady after you—let me go back a step further—isn't it a fact that about 2 weeks after this discussion took place at Mrs. Hollmann's house you went to Mrs. Hollmann and said, "Myrtle, I got drunk and I went up to Palmer and stayed a couple of days and when I came back I was so drunk that I told Katy what was said over at the house about her being a whore." Do you remember having a discussion like that with Mrs. Hollmann? A. No, I don't.

Q. Do you remember going to Palmer and staying 2 days without Katy? A. No.

Q. Do you remember going up there and staying 1 day?

(Testimony of Charles Brady.)

A. No—well, I have been to Palmer 2 or 3 times, but I don't—

Q. Do you remember any discussion with Mrs. Hollman approximately 2 weeks after this incident at the house in which you told her when you were drunk you had forgotten yourself and told Mrs. Brady about this incident? A. No. [47]

Q. Do you recall telling Mrs. Hollmann that?

A. No.

Q. Do you recall telling anyone at all?

A. No. I told her the night that it happened.

Q. Now, isn't it a fact, Mr. Brady, that you and Mrs. Brady discussed this question on several occasions as to how best you might use it to extract money from Mrs. Hollmann? A. No.

Q. Did you ever conspire at any time with Mrs. Brady to extract money from anyone about bringing false charges against them?

A. No, I don't think I have.

Q. Do you know a Mr. Barger? A. Yes.

Q. He sued you on a note? A. Yes.

Q. And did you about the time of that lawsuit, at the time he got the judgment, tell Mr. Hollmann and Mrs. Hollmann that you were going to have Katy go out to a nightclub with Mr. Barger and have her scream and then you were going to appear on the scene and accuse Mr. Barger of making an attack on her? A. No.

Q. Could you have said it?

A. How do you mean, could I have? [48]

(Testimony of Charles Brady.)

Q. Could you have made such a statement to Mr. or Mrs. Hollmann? A. No, I didn't.

Q. Well, could you have said it?

Mr. Nesbett: He has answered the question twice. I can't see the point——

Mr. Butcher: I asked——

Mr. Nesbett: Just a moment—of putting words in the witness' mouth after he has answered the question twice.

Mr. Butcher: I asked him if he said it, Your Honor, then he said "no" and I asked him if he could have said it and he said "I didn't," now I want to know if he could have said it.

The Court: Well, I thought he answered the question whether he could have said it.

Q. (By Mr. Butcher): Now, Mr. Brady, do you deny that you ever said that to anybody?

A. Yes, I do.

Q. Do you deny that you ever discussed it with Mrs. Brady? A. Yes, I do.

Q. And it is your testimony now that you never had a discussion about Mr. Barger and his going to a nightclub with Mrs. Brady?

A. There has never been such a discussion.

Q. During the course of your married life with the second Mrs. Brady has she been pregnant?

A. Yes, she has. [49]

Q. How many times?

A. She has been pregnant about 3 times, I believe.

(Testimony of Charles Brady.)

Q. Did each of those pregnancies result in miscarriage? A. Yes, sir.

Q. During the time of miscarriage she was very ill, was she not? A. She was ill.

Q. For how long a period was she ill?

A. I will say she was ill at one of them. She wasn't ill at all of them. Most of them she didn't hold over about 3 months—one time she held for 3 months.

Q. And on the time she held for 3 months she was very ill? A. Yes.

Q. Now, will you tell us when that was?

A. That I don't remember.

Q. Could it have been in the spring of 1952?

A. I don't know for sure.

Q. Well, all right. Now, Mr. Brady, you state that you were the only one that abused her about this statement and you only did it when you were drunk?

A. Well, it wasn't necessarily all the time when I was drunk. If there was an argument that came up it came up usually.

Q. When you weren't drinking?

A. If I was drinking or not.

Q. But didn't you previously state that it was mostly when you were drinking? [50]

A. Usually when I was drinking.

Q. That you abused her about it? A. Yes.

Q. If you left her alone no one else was abusing her? A. Not that I know of.

Q. So any distress she had, any abuse she re-

(Testimony of Charles Brady.)

ceived was received from you, is that not correct?

A. Yes.

Q. You were responsible for it?

A. Yes, in a way.

Q. And you abused her because you didn't have faith in her and believed the statement to be true?

A. Well, I didn't know whether to believe it or not.

Q. Did you make any effort to find out?

A. Well, I didn't know if it would be a good idea.

Q. Have you always had a sneaking suspicion in the back of your mind it was true?

A. Could have been.

Q. You were afraid if you investigated you would find out it would be true, is that what you are stating?

A. Well, I don't know what to think about it.

Q. Mr. Brady, you have talked this case over a good many times with Mrs. Brady, haven't you, this lawsuit?

A. Yes, we have talked about it.

Q. Do you remember ever talking to me about it? [51]

A. Yes, last spring when I was on jury duty.

Q. And on that occasion did you tell me that Mrs. Brady was just, through this lawsuit, trying to make Mrs. Hollmann sweat a little bit and she was going to dismiss it?

A. No, you asked me if this case was going to go through and I told you it wasn't up to me. I

(Testimony of Charles Brady.)

believe that you and—well, the lawyer with you, were over at the Westward.

Q. Mr. Grigsby?

A. Mr. Grigsby was with you.

Q. Didn't you on that occasion state that your wife wanted to make Mrs. Hollmann sweat a little bit before she dismissed it?

A. No, you might have brought that up. You asked me if this case was going to come into court and I said I didn't know, it wasn't up to me.

Q. You don't remember stating in my presence and in the presence of Mr. Grigsby that she was going to make Mrs. Hollmann sweat a little bit before she dismissed it? A. No.

Q. Could you have made that statement?

A. No, I don't think so.

Q. Do you deny it?

A. I don't remember saying it, no.

Q. Do you deny it?

A. Yes, I will deny it. [52]

Q. Do you deny you made the statement?

A. Yes.

Q. Now, after you state the relation deteriorated between yourself and Mrs. Hollmann isn't it a fact that you, Mrs. Brady, Mr. Hollmann and Mrs. Hollmann often got together and went on fishing trips, had social gatherings together in each others homes and sometimes dropped into cocktail bars and had a drink together?

A. Well, I don't remember ever going fishing and I remember one night we were out drinking.

(Testimony of Charles Brady.)

I believe it was on St. Patrick's Day, but I don't know if that was before or afterwards.

Q. Isn't it a fact that your relations have been so good you exchanged Christmas cards, birthday presents and Christmas presents between you and the Hollmanns since that time?

A. I never have myself. I don't know if my wife has or not.

Q. Well, do you know that she has not?

A. No, I don't.

Q. Would you deny that?

A. No, because I don't know. She sent about 200 out this year.

Q. During all the time after the alleged statement was supposed to have been made isn't it a fact that you and Mrs. Hollmann—or you and Mrs. Brady, when you were together, never have discussed this?

A. No, it wasn't discussed—not when we were all together.

Q. When you were together you were together in friendly [53] spirits and no harsh words were exchanged between you?

A. We more or less had to be as we all worked in the same office.

Q. And Mrs. Hollmann had never at any time tried to cause your wife to be fired or lose her employment? A. No.

Q. And you never heard Mrs. Hollman say anything about your wife, or against her, other than

(Testimony of Charles Brady.)

the statement you alleged she made at the house, is that not correct? A. That is right.

Mr. Butcher: That is all.

CHARLES BRADY

testifies as follows on

Redirect Examination

Q. (By Mr. Nesbett): How did you run that Red Cab Company? By shift, didn't you, Mr. Brady?

A. Yes. Well, there were 3 partners in it and we each were supposed to take care of a shift of dispatching.

Q. What do you mean by taking care of a shift?

A. Well, 8 hours. It was a 24-hour operation.

Q. Take care—you mean each of you would pay one dispatcher wages?

A. Well, Mrs. Hollmann dispatched herself or her husband, [54] Carl, did and Katy dispatched for me all the time and Sam, I think, was hiring another girl.

Q. Well, then Catherine or Katy, the plaintiff, would work one shift and Mrs. Hollmann another one? A. Yes.

Q. They had very little occasion to see each other except on change of shift, would they?

A. That is right.

Q. After this statement was made to you and you informed your wife of it did you have occasion to—the 2 of you, to go to the Hollmanns' socially?

(Testimony of Charles Brady.)

A. I think we have been in the home probably twice since that—maybe more than that since that statement was made. I have been in there more times.

Q. You were over in connection with your daughter, to see your daughter?

A. Yes, I have been there on that and I have been over there on business.

Q. Then is it your testimony that the relationship between Catherine Brady and Mrs. Hollmann has been good ever since that statement was made?

A. Well, it hasn't been good, but they don't get into a fight every time they see each other.

Q. Do they ignore each other as much as possible?

Mr. Butcher: I object to that as leading, Your Honor. [55]

Q. Well, this matter of your making a remark about your wife being a good dispatcher. I am a little confused on that testimony. Did that take place at the meeting on the evening of November 24?

A. I believe that was said the same night, yes.

Q. And tell us again what was said? How it arose?

A. Well, that argument came up pretty often about her being a better dispatcher and, of course, I guess I thought she was and she could handle a faster shift and I am not sure if that was right at the time that this was said or not, the night of the statement, or the evening of the statement.

(Testimony of Charles Brady.)

Q. I understood you to testify in response to Mr. Butcher's question that you made the remark that Catherine was a good dispatcher somehow or other mixed in the conversation and it made Mrs. Hollmann mad?

A. It did make her mad, but the statement that I am talking about, the incorporation. I don't remember for sure what brought—what made her as mad as she did get when I said that.

Mr. Nesbett: That is all.

Mr. Butcher: That is all.

(Thereupon, the witness was excused and left the stand.)

The Court: Recess for 5 minutes.

(Whereupon, at 4:15 o'clock p.m., following a 5-minute recess, court reconvenes, and the following proceedings were had:) [56]

The Court: You may call your next witness.

Mr. Nesbett: Call Catherine Brady, Your Honor.

CATHERINE BRADY

called as a witness for and on behalf of the plaintiff, being the plaintiff, and being first duly sworn, testifies as follows on

Direct Examination

Q. (By Mr. Nesbett): Is your name Catherine Brady? A. Yes, sir.

Q. And you are the plaintiff here, aren't you?

A. Beg your pardon.

Q. You are the plaintiff in this case?

(Testimony of Catherine Brady.)

A. Yes, I am.

Q. And the *husband* of Charles Brady who just testified?

A. Yes, sir.

Q. When did you marry Charles Brady?

A. I married him November 27, 1949.

Q. And I might ask how old are you now?

A. 34.

Q. 34, and were you employed at the Red Cab Company when you married Mr. Brady?

A. No, I wasn't.

Q. Mr. Brady was, however, was he not? [57]

A. Yes, he was.

Q. You later became employed there, did you not?

A. Yes, sir.

Q. Now, calling your attention to the evening of November 24, 1951, did your husband come home, to the family home that evening?

A. Yes, he did. He got home about 5:30. I was cooking dinner at the time.

Q. And will you state what happened when he came home?

A. He got home and sat in the livingroom for a little while and kept looking at me. Then finally he asked me to come in and sit in the livingroom, that he had something to ask me. He said, "Have you ever been in Butte, Montana," and I said, "No, I haven't." He said, "Are you sure," and I said, "Yes, I am sure I have never been in Butte, Montana" and I asked him why did he bring that up, so he sat there a minute and he said, "Well, I was told tonight that you were an ex-prostitute from

(Testimony of Catherine Brady.)

Butte, Montana, and that you were supposedly working with a girl named June” and I said, “Who said that,” he said, “Myrtle told me” and he also told me it was during an argument in this business situation they had. I asked him if he believed it and he said he didn’t know whether to believe it or not. I said, “Well, I have never been a prostitute,” and I argued with him over it. I started to cry and he looked at me again and said, “Are you sure” and I [58] said, “Yes, I am sure,” so he let it go at that. He didn’t say any more, not that evening, although afterwards, why, we hardly spoke.

Q. You will have to speak a little louder, slower and into the microphone, please.

A. After he told what Mrs. Hollmann accused me of and I told him that I had never been a prostitute and I have never been in Butte, Montana, why, then the conversation ceased. I sat there and cried during the dinner time and he took off about 7:00 o’clock and I didn’t see him again until the next morning around 7:30.

Q. What happened when he came home?

A. I was sitting up waiting for him to come home and he got out of the cab, came in the house and took one look at me and said, “You dirty whore. Get out of here and stay out. I gave you my good name.” that is what he said, although I didn’t leave. I slept on the settee that night and he went upstairs to the bedroom and slept.

Q. That morning you slept on the settee?

A. Yes, I did and many mornings after that too.

(Testimony of Catherine Brady.)

Q. You had been married, according to the testimony, almost 2 years at the time this occurred?

A. It was just about 3 or 4 days before my anniversary.

Q. Now had your previous 2 years of married life been a happy life? [59]

A. Yes, sir, it was. It was very happy. We got along beautifully together and he used to drink occasionally. We used to go out and have a cocktail or 2, go out with a group, but he never drank excessively, but maybe once or twice during the whole time excessively and we have always gotten along beautifully before that.

Q. How did you get along after this incident?

A. Well, after I was accused of that, why, then there were arguments all the time. He brooded on it. I could see that he did.

Q. I can't hear you again now.

A. I said he brooded on that constantly and he would drink more than he ever did before this happened and we got into awful fights afterwards and he would come home after his drinking over excessively and started arguments with me.

Q. And the arguments would be over this?

A. It was always over that. One time he came home and he said, "You dirty slut. I don't want you around me. I wouldn't touch you with a 10-foot pole." He said things like that and I went into hysterics. I just couldn't control myself. I couldn't believe that he would believe such a thing.

Q. Didn't you try to reason with him?

(Testimony of Catherine Brady.)

A. I tried to reason and after awhile I gave it up. I couldn't talk to him. After he got over his drunks he would just say leave me alone and in about 2 or 3 days do the same thing [60] over again.

Q. What was your state of health at the time this happened?

A. Well, before this all happened I weighed 135 pounds. I was healthy. There was nothing wrong with me. I have no cancer.

Q. Well, I will ask you when we come to it.

A. And I was very healthy. There was nothing wrong with me. I lost weight. In 3 months I went down to about 116 pounds and that caused the heart attack, mostly from nervousness.

Q. Did you go to a doctor as a result of this condition?

A. Yes, I was under Dr. Davis' care all the while.

Q. What treatment did he prescribe for you?

A. Well, he gave me heart pills to release the tension around the heart so I wouldn't have those heart attacks. I had 2. One was a bad one and he also gave me medicine for my nervousness.

Q. Did you 2 go out 2 or 3 days later on your wedding anniversary?

A. Yes, we did on Wednesday. I was going to cook again as he didn't want to be seen out, but he insisted we go and we decided to go to Thompson's, but in the meantime I was heartsick. We

(Testimony of Catherine Brady.)

had an argument that morning and we went to Thompson's to eat and——

Q. Would you mind not speaking quite so fast.

A. I said we went to Thompson's to have our dinner and I was still wrought up over the whole thing. I couldn't sit and eat. I cried and while we were there Mary Powell, she has [61] been a friend of mine for many years, she was a waitress there, and she said there was something wrong and I took off away from the table and went into the ladies room because I couldn't sit there. I was ready to cry some more and Mary Powell came into the ladies room to talk to me to see what was wrong and I explained the whole situation.

Mr. Butcher: Your Honor, I am going to object to any testimony this witness says about Mrs. Powell or any other person occurring over to Thompson's which is out of the presence of the defendant and is only self-serving. It doesn't make any difference if 50 people were there and talked to her. It wouldn't make any difference as to this case.

Mr. Nesbett: Mrs. Brady just stated what happened, however, Your Honor, I don't think her answer was wrong so far.

The Court: No, it was not objectionable as far as she had gone.

Mr. Butcher: What she is doing, Your Honor, is establishing by somebody else present the fact she was upset and that she explained to this third person who was present that she was upset which is all outside the presence of this defendant, outside

(Testimony of Catherine Brady.)

the presence of the court, and not possible to put this thing to the test of cross examination.

Mr. Nesbett: Your Honor, we don't contend the plaintiff had all the conversation in the presence of Mrs. Hollmann.

Mr. Butcher: Actually it is hearsay as well. [62]

The Court: That is what I was just going to inquire if the basis of your objection was it was hearsay, but the trouble, as I see it, with that objection is that her saying to this woman in Thompson's Cafe how she felt is no more damaging to you than her statement as to how she felt, period. So it seems to me that no particular purpose would be served by excluding that itself. Of course, it is in the nature of hearsay, but, as I see it, it is harmless.

Mr. Butcher: Your Honor, she is by inference showing in the presence of a third person—attempting to give more weight to what she says which is hearsay.

Mr. Nesbett: Well, we intend to bring the third person in—she is in the courtroom now—to show she was upset and suffering. After all, it was the woman's anniversary and a woman thinks a lot of that occasion.

Q. (By Mr. Nesbett): What happened then, Mrs. Brady?

A. Why, I stayed in the restroom for awhile and Mary, that is, Mrs. Powell, walked out and talked to Charles and she said, "What is this I hear——"

Q. Well, now you are quoting the witness di-

(Testimony of Catherine Brady.)

rectly. You must not tell what she said, just tell what happened.

A. Well, I left the restroom. I went back to my table and sat down. By then dinner was served and I was still upset and Mary was standing there. I told her, "What would you think [63] of a husband that——"

Mr. Butcher: Now, Your Honor, I object to that as being self-serving and hearsay.

The Court: Objection sustained.

Q. Well, what happened? Did you have a long pleasant evening?

A. No, we didn't. I didn't even get through my dinner. We left Thompson's shortly afterwards. He insisted on going out to see a floor show. I wanted to go home. I was upset over it, and which I did.

Q. I ask you whether or not any other arguments came up over this statement of Mrs. Hollmann's?

A. Yes, afterwards on several and many occasions. We would sit there and talk and I tried to talk to him and tried to convince him she was not telling the truth and usually that would upset him more. He would brood about it and he would take off and go out to have a few drinks with the boys and come home the next morning and continue with it. He was very abusive with his language. Every time he looked at me he sneered. We were growing further and further apart and there was nothing I could do to fill in that, bring that gap together.

(Testimony of Catherine Brady.)

He believed it. In the meantime I said I was going to have Mrs. Hollmann take—bring that into court—I was going to take that into court, bring that June up to court and make her prove that I was in Butte, Montana, and that I was a prostitute and that is why I went [64] in and instigated this suit.

Q. Did you tell Mr. Brady you were going to file the suit?

A. I told him that I was going to file a suit against her. He said no he would rather I just let it lay, leave things as they are, but I couldn't stand the abusiveness and I decided I was going to bring it to a head so I went in and brought suit against her without his knowledge.

Q. Well, now how long did this go on—these arguments and so on, Mrs. Brady?

A. They went on until I left about the early part of March when I left to go Outside. In fact the morning I left he was out drinking. I knew when he got home again we would have another battle and abusive and I got to the point where I couldn't take any more of it. I was sick mentally; I was sick physically; I was losing weight fast and I decided I was going to go out, but I didn't go out to a doctor. I went out to—just to leave him and to make up my mind and give him a chance to think things over as to what to do—whether to divorce him or keep on living with him or what.

Q. Where did you go when you went Outside—rather, how did you get Outside? Did you have enough money to make the trip?

(Testimony of Catherine Brady.)

A. No, I didn't. I didn't take a dime of his money. In fact, I was putting his tickets together with the different cars he owned and I had all the money there. I had saved \$200.00 [65] I was going to get him a watch for his birthday. I used that and before I left for the plane I went over to Mrs. Powell's and borrowed——

Q. Speak louder and slower, please.

A. I went over to Mrs. Powell's and borrowed \$80.00 to have enough money to get to Oregon.

Q. Is that the lady you were saying that worked in Thompson's? A. That is Mrs. Powell.

Q. All right. Where did you go when you went Outside?

A. I left and went to my brother's. He lived in Cave Junction, Oregon.

Q. How long did you stay there?

A. I stayed there a little over 2 weeks. I was under a doctor's care there and he was going to leave for the east coast to go home to see the folks, but the doctor didn't think that I should take a car trip across country like that so I decided I would go to Reno. That is where I lived prior to my coming up here. I decided to go to Reno and visit a girl friend down there, which I stayed with until I came back.

Q. Is that—were you living in town or on a ranch?

A. I was living outside of town on a ranch, yes, sir.

Q. How long did you stay in Reno?

(Testimony of Catherine Brady.)

A. I stayed there a little over 2 months.

Q. Now, after leaving Mr. Brady did your physical and mental [66] condition improve?

A. No, it didn't. In fact, it got worse. I just couldn't get ahold of myself. I was just doctoring all the time, but mentally I was sick. He called me about a week before I came back—he called me from Anchorage—he discovered where I was through Mrs. Powell—and he asked me to come—if I was coming home. That was the first telephone call. I told him, no, I decided I wasn't coming home. I didn't feel I was ready to come home. If I did come home I was going to face what I went through in the past and I had decided to stay. So he waited, I guess, about 5 days and he called again and asked me wouldn't I please come home. He said, "Please come home and let's talk this over. Don't do anything rash, just come home and let's talk it over." I told him I didn't feel like coming back again, but then I said, "All right. I will come back and I will talk this thing over with you and see what we are going to do," and he sent me the money to come back.

Q. Now, what were your relations with Mr. Brady after you returned to Anchorage from Reno?

A. Well, the first day I got home—I sent him a telegram from Seattle telling him I was going to be in on the early morning plane and I got in at 6:00 o'clock in the morning. I had nobody to meet me. I called the office and inquired about him. They said he wasn't working. I called the [67] house.

(Testimony of Catherine Brady.)

There was no answer. I went home by limousine. I waited for him about 2 hours and where I was sitting in the chair I could look out the window and a cab stopped. Mr. Brady got out very intoxicated, so I just left my suitcases standing there in the middle of the room. I wasn't going to unpack. I thought the least he could have done, if he was expecting me, was to meet me.

Q. Did you have an argument on that occasion?

A. No, we didn't. We didn't have an argument. In fact, he didn't remember seeing me. Just as he walked in the door he said, "Hi! You back," and walked upstairs and went to bed, and I thought, well, I will wait until he wakes up to talk it over.

Q. How was your married life from that time on, generally?

A. Well, we still don't get along right to this day.

Q. You don't have as many arguments?

A. No, the arguments are less. I did have a bad argument with him in about October of '52 when he again called me vile names and called me a dirty whore and he mentioned again about giving me his good name and with that he grabbed at me and tore my sweater. I was afraid if I didn't stand up to him and just take it that he would strike me. He was that angry, so I just stood there and told him to go ahead and do it again. I said, "Just go ahead and do it again." So he just ripped the rest of my clothes—not all the [68] clothes, but ripped my

(Testimony of Catherine Brady.)

blouse off completely and with that he walked out.

Q. That was October of '52?

A. That was October of '52, yes, sir.

Q. The arguments since have gradually diminished?

A. They have diminished, but the gap has never been closed. We are further apart. In fact, 2 weeks ago I was contemplating a divorce then I was talked out of it. He said to give him another chance, just to wait and see and maybe things will be different. I have waited so long.

Q. Was that decision to file for divorce based on the incident built up?

A. Well, it is. All of our arguments stems from that because we have never gotten along since. We get along for a little while then there is weeks at a time that we hardly speak, and before I left for Outside, why, he would sleep upstairs and I would sleep downstairs on the settee and things like that have gone on down in Kenai also. He would stay in the bedroom and I would sleep on the settee because I——

Q. Mrs. Brady, have you ever been in Butte, Montana?

A. No, sir, I have never been in Butte, Montana.

Q. Have you ever been in Montana?

A. I have been through Montana on the northern route going to Minnesota when we came through from Alaska.

(Testimony of Catherine Brady.)

Q. Where did you spend your early childhood and youth? [69]

A. I was born in New Jersey and left there in the latter part—I guess it was '42.

Q. Did you go to school there?

A. Yes, I did.

Q. What schooling did you take?

A. I had 2 years of high school and took business college.

Q. Did you work around New Jersey before coming to Alaska?

A. Yes, I did. I was a stenographer and a book-keeper for Wallace and Terrin in New Washington, New Jersey. Prior to that Brecken and Dickenson. That is a big medical firm. They make medical thermometers and syringes.

Q. I can't hear.

A. Brecken and Dickenson, a medical firm in New Hometown.

Q. How long did you work as a stenographer or secretary in New Jersey before coming west?

A. Oh, I would say around 4 years.

Q. Then where did you live? Then which state did you come to?

A. I came to California. I stayed in California for about, I guess, it was about 7 months then I came from there went up to Reno.

Q. Were you married?

A. Beg your pardon?

Q. Were you married then?

A. No, I wasn't married at the time.

(Testimony of Catherine Brady.)

Q. You did subsequently though, get married?

A. In Reno, 1944.

Q. In Reno in 1944? A. Yes.

Q. You divorced that first husband and came to Alaska, is that correct?

A. No. I was married back east. My marriage only lasted a year and I was divorced back in New Jersey and went to California. Then from there I went to Reno and in 1944 I again got married and that lasted until the spring of 1949.

Q. You came to Alaska with that husband, did you not?

A. No, I came here with him in '47. We came up here for a trip. We went back in the fall of '47.

Q. Now, have you ever had a cancer?

A. No, sir, I have never had cancer.

Q. This operation Mr. Brady was trying to explain, can you tell the court and jury what that was all about?

A. Yes. When I left here I didn't leave here sick. I wasn't ill. In fact, I didn't think it was anything to worry about. It didn't bother me. I had gotten a telegram from home stating my dad was quite ill and he was in a coma and didn't know whether he was going to pull through or not. Mom called and said for me to come home. So I left here in September, the early part of September 1950, and went Outside to see my dad. During that time I was telling my [71] mother about a little bump I had and she kind of got worried and talked to a doctor about it. In the meantime, the doctor, he is

(Testimony of Catherine Brady.)

the family physician, asked me to come to the office and have a check-up on it and he thought I should have further examination and sent me to the Memorial Hospital in New York, which is a cancer clinic. I went to New York and had all these tests taken. I found out it wasn't cancer. It was just a slight tumor. I had the tumor removed and a very slight part of the left breast, but I did not have the full breast removed.

Q. Then did you, when you went out in March of '52, go out with the idea of having an operation?

A. No. I went out in March of '52 when I left Mr. Brady. I definitely left him.

Q. Did you have friendly relations with Mrs. Hollmann after this incident, after she made the statement?

A. For a long while if we passed on the street I would turn my head the other way and wouldn't even look at her. That went on for a long time. I was in her house, I believe, twice. Once it was to see Chuck's daughter and another time I was in there when Mrs. Daugherty now—she was Mrs. Daly at the time—was leaving for Outside with her mother, that is, Mrs. Hollmann and left with my husband's daughter.

Q. You were in the house, did you have friendly relations with [72] Mrs. Hollmann while you were there?

A. Just spoke. Not very friendly, no.

Q. How would you handle the situation when you relieved each other on the dispatcher's desk?

(Testimony of Catherine Brady.)

A. She would get up and I would sit down. That went on for the longest while.

Q. Did you talk about things?

A. No, I wouldn't discuss it. I started suit and I wanted her to prove that in court, to bring that June—I thought that was the place to do it. I wouldn't discuss it with her at all. I would only get myself upset more.

Q. You also kept the books for Red Cab—rather, was it Red Cab or Mr. Brady?

A. No, at first about 1950 and early part of '51 I kept books for my husband. At the time when I married him he only had one car on the stand and up until '51 he had gotten six cars of his own, that is, owned completely by him and he also was in partnership with Sam Mealey on five cars. All I did was just keep their accounts, their takes, check their cards every day and take that money to the bank. In 1950 for awhile I didn't.

Q. That was only for Sam Mealey and Mr. Brady that you kept the books?

A. In 1950 I kept—they decided that we should keep a sheet on call cars and what each one made and I kept those, but I [73] wasn't paid for it. I just did that in my spare moments as a favor to them because they thought that should be done, so the boys wouldn't get away with the takes. They would go 2 or 3 days without turning in and when it came time to turn in they didn't have money. They decided in that way we would overcome a lot

(Testimony of Catherine Brady.)

of that and I just kept daily track of their takes and it was turned over to them individually.

Q. All right. About this matter of being pregnant. Were you pregnant 3 times during your marriage to Mr. Brady?

A. Yes. In 1951, September '51 is when I had one miscarriage and that was my first miscarriage and then I had a miscarriage afterwards which wasn't very serious, but the one I had just last February—will be a year this March—is when I went to the hospital from Kenai and I had to undergo surgery for it.

Q. You wanted a child, didn't you?

A. Yes, I did. Very much.

Mr. Nesbett: I believe that is all, Your Honor.

CATHERINE BRADY

testifies as follows on

Cross Examination

Q. (By Mr. Butcher): Mrs. Brady, during the years you have been married to Mr. Brady you have gotten to know him pretty well, haven't [74] you? A. Yes, sir.

Q. Sometimes he doesn't tell you the entire truth, does he?

A. I have never known him to lie to me.

Q. You never caught him in a lie? A. No.

Q. In all the years you have been married to him?

A. Not actually. He would be very evasive. If

(Testimony of Catherine Brady.)

I asked him about something, or something pertaining to the arguments especially with Mrs. Hollmann he would become evasive so it wouldn't cause another argument, but I have had complete faith and trust in him.

Q. On some occasions when you asked him about where he had been and what he was doing he would tell you something that wasn't true, wouldn't he?

A. No, that is not so. I knew at all times where he was, or most all times.

Q. And you say that when he did tell you something you could rely upon it implicitly?

A. Yes, sir.

Q. Never betrayed your trust?

A. No, he never did.

Q. Did you testify that when you were down in the states with your brother in Reno he called you long distance on the telephone? [75]

A. Yes, he did.

Q. He told you to come back?

A. He asked me to come back.

Q. And sent you the money?

A. That was the telephone call, yes.

Q. And he said he would send you the money to come back and treat you nicely when you got here?

A. He said for me to come back and talk it over. He didn't say how he would treat me.

Q. When you did get back he was drunk and wouldn't talk it over?

(Testimony of Catherine Brady.)

A. Not the morning I came in. I was home 2 hours——

Q. At least that is one occasion when he didn't keep his word?

A. I could explain that very well. I sent a telegram from Seattle stating that I would be home at 6:00 in the morning and on the telegram they had 6:00 p.m. In fact, when I came in the house Ray Barger was staying there. It was Ray that met me at the door and he also had a maid come in that day or that morning to clean the house up because he was expecting me home that evening and Ray Barger is the one that showed me the telegram to show me that mistake.

Q. Why were you indignant then?

A. I didn't realize there was a mistake in the telegram. I was very indignant at the airport and called all over because I did send a telegram.

Q. When you finally understood his drunkenness was not a result [76] of ignoring you then you didn't feel so badly towards him?

A. Yes, I did. Well, I didn't feel too badly towards him. I decided I would sit and wait and have him tell me why.

Q. Did you approve of his heavy drinking?

A. No.

Q. Did you ever berate him about it?

A. Just during the time he did a lot of drinking.

Q. Would you get him to promise not to do it any more?

A. Never. That was one promise I never asked

(Testimony of Catherine Brady.)

him. I knew that if he wanted an occasional drink he would go ahead.

Q. I am talking about the heavy drinking?

A. He never promised me he would stop drinking.

Q. When you berated him about it didn't he apologize about it? A. He was sorry.

Q. Did he say he wouldn't do it again?

A. No, never, no, sir.

Q. Now, after he came home on this occasion and told you what he thought Mrs. Hollmann had said, did you ever make any investigation yourself to find out if Mrs. Hollmann actually said that?

A. Well, I had Sam Mealey sit there and talk to me and also——

Q. I don't want you to state what Sam said. I am asking you if you went to Mrs. Hollmann and asked her if she said it?

A. No, I did not go to Mrs. Hollmann.

Q. You had plenty of opportunity to go to Mrs. Hollmann and [77] get the truth, did you not?

A. But I wouldn't speak to her after she made that statement.

Q. Sometime later you spoke to her?

A. Much later, yes.

Q. Did you take occasion then to ask her if she made any such statement?

A. No, I wasn't going to ask her. I took both of their words; Sam wouldn't lie and my husband, above all, wouldn't lie to me and he certainly

(Testimony of Catherine Brady.)

wouldn't have treated me like that with just figmentation of his own mind. Chuck is not like that.

Q. To answer the question now did you on the several occasions when you talked to Mrs. Hollmann, either friendly or otherwise, did you at any time ask her if she actually said that?

A. No, I didn't.

Q. And you had an opportunity to do so, didn't you?

A. Yes, I did, but I wouldn't ask her.

Q. But you preferred to believe your husband?

A. And Sam Mealey.

Q. There is no testimony Sam Mealey said anything at any time. Did you testify when Mr. Nesbitt asked you questions that Sam Mealey ever said anything? A. He did come in and——

Q. I am not asking you what he said. I am asking you if you previously testified about Sam Mealey saying anything? A. No. [78]

Q. Now each time your husband would come home and abuse you, as you stated, mostly in this drunken condition, did you ever question then whether he could have been telling you this and whether it might not be true?

A. Beg your pardon.

Q. Did it ever occur to you during any of these times which he abused you in a drunken condition that his statement might not be true?

A. I never disbelieved him.

Q. Did you ever doubt anything he ever told you? A. Not in the least.

(Testimony of Catherine Brady.)

Q. How many times did you say you had been married? A. 3 times.

Q. 3 times, divorced from each husband?

A. Yes.

Q. Mrs. Brady, what is your occupation?

A. Right now?

Q. Well, yes, right now?

A. Right now I dispatch cabs and I take care of telephones and occasionally I take a few trips during the day.

Q. Do you have any other job down there?

A. Just telephone operator.

Q. Do you participate in any card games as dealer?

A. No, sir, I am not doing anything like that.

Q. Have you ever run a card game as a dealer?

A. Yes.

Q. Here in Anchorage? A. Yes, sir.

Q. You were doing that, were you not—most of the time since you came up here you were working in a house where they gamble and run a card table, were you not?

A. No, sir, not mostly. When I was up here I did about 3 or 4 days at one time and for a very short period of time.

Q. Do you remember a place called Peterson's out here? A. Yes.

Q. Were you a dealer in that place?

A. Just for about a week when I first came up.

Q. Do you remember a man named Fannin, Buzz Fannin?

(Testimony of Catherine Brady.)

A. Yes, I did. That was Malane and not Peter-son.

Q. Did you run a table in that place?

A. Yes, I worked out there.

Q. During all the time you have been married to Mr. Brady did you run a card table?

A. Yes, sir, I did.

Q. Off and on? A. On a few occasions.

Q. Now, before you married Mr. Brady and was married to your former husband—what is his name?

A. Wes Bubuto.

Q. Wasn't he a gambler? [80]

A. No, you couldn't call him a—he was a croupier.

Q. Croupier?

A. A croupier is somebody that takes care of the gambling table.

Q. You worked with him from time to time?

A. I worked down in Reno, sir. I worked there from '43 to '47 at the gambling tables, yes, sir.

Q. Now, after 2 previous marriages and your marriage to Mr. Brady you were still unsophisticated enough that you believed everything he told you as the literal truth, is that your testimony?

A. Yes, I do believe him.

Q. Has any man ever lied to you?

A. Yes.

Mr. Nesbett: I object to that question.

The Court: Objection sustained.

Q. Now, on the 24th day of November 1951 were

(Testimony of Catherine Brady.)

you employed at the Red Cab Company as a dispatcher and bookkeeper?

A. I was working on their books at the time. I had not been working for about—I would say about a week. During that time I was still doing their books, yes.

Q. And how long after that period did you continue to——

A. I worked there all the time until just before I left and I would take off, oh, maybe a night or 2 a week when I wasn't feeling well and they would put a driver in or I would have to put a driver in. It was Chuck's part I had to take [81] care of. He had to take care of his own 8-hour shift.

Q. How long did you continue to work for Red Cab until you finally quit?

A. In fact, I quit the morning that I left. I was at the dispatch table when I quit.

Q. Your leaving was entirely voluntary on your part, was it not?

A. It was because he was that abusive and he was drunk again. I knew what I would have to face if I went home again. I couldn't take that so I picked up and left.

Q. So you voluntarily quit?

A. I quit Mr. Brady.

Q. He didn't fire you? A. No.

Q. Mrs. Hollmann didn't fire you?

A. She couldn't fire me.

Q. And no one else fired you?

A. Nobody could fire me. The only one who

(Testimony of Catherine Brady.)

could say I couldn't work there was my husband. He was taking care of his own 8-hour shift like they were.

Q. Did your husband go around and tell other people about this statement that was made, to your knowledge?

A. Not to my knowledge, no.

Q. He told only you so far as you know?

A. So far as I know I am the only one he told.

Q. Now, do you know that that story circulated around anywhere? A. Yes, I know that.

Q. You know that. Well, then do you know who circulated it?

A. It was discussed the day after the incident happened.

Q. Where was it discussed?

A. Besides Chuck and myself it was discussed at my home with Sam Mealey.

Mr. Nesbett: I——

Mr. Butcher: I asked——

The Court: You will have to talk one at a time.

Mr. Butcher: Your Honor, I am asking her if the story got around and she said, yes, and I said in what manner did it get around and she said, "Mr. Brady, Mr. Mealey and I discussed it at my house." That is not responsive to the question.

A. It must have been discussed because everybody knew it.

Q. You don't know that it was discussed?

A. It was discussed around the cab stand.

Q. But you don't know who discussed it?

(Testimony of Catherine Brady.)

A. I know a few people.

Q. You said you didn't know whether Mr. Brady had discussed it?

A. I don't know who started the discussion, but it was discussed that morning by the different employees at the cab stand.

Q. It didn't cause you to lose your job?

A. Not my job because I was working in our own interest. It [83] was our own 8-hour shift I was taking care of.

The Court: We will recess this case now. Ladies and gentlemen of the jury, bear in mind the admonition heretofore given you and be back in the courtroom at 10:00 o'clock tomorrow morning. Adjourn until 10:00 a.m.

(Thereupon, at 4:58 o'clock p.m., this case was adjourned to the next morning, to be resumed at 10:00 o'clock a.m., February 1, 1955.)

The Court: Plaintiff may resume the stand.

CATHERINE BRADY

resumes the witness stand and testifies as follows on

Cross Examination—(Continued)

Mr. Butcher: May I have the reporter read the last question, Your Honor?

The Court: Yes.

(Whereupon, the reporter read the question Line 24, Page 83 and answer Line 25, Page 83.)

Q. (By Mr. Butcher): Mrs. Brady, I believe

(Testimony of Catherine Brady.)

you told the court, to one of Mr. Nesbett's questions, about a miscarriage you had?

A. Yes, sir.

Q. Will you give me the date of that again?

A. Beg your pardon.

Q. The date when the first one occurred?

A. My first one occurred in 1951.

Q. Was that September or October 1951?

A. It was the first year we moved into 229 East 5th Avenue and I think it was '51 when we moved in there, or '50.

Q. Did you testify yesterday it was September or October of 1951?

A. I thought it was 1951. It was the first year we moved in to 229 East Fifth and that was the year it happened. I believe [86] that it was 1950 we were living there.

Q. And had 2 others after that?

A. Yes, sir.

Q. And do you recall when the other 2 occurred?

A. The second one wasn't a serious one at all. It was about a 6-weeks pregnancy and the other one was here last year. I had to undergo surgery.

Mr. Nesbett: Your Honor, I realize the miscarriages might be pertinent, but I think there is no point in going into all this. If it occurred after these remarks were made and could possibly have affected her health then it might be pertinent, otherwise I can see no reason to go into it.

Mr. Butcher: That might be true, Your Honor, except counsel brought out from this witness on

(Testimony of Catherine Brady.)

direct examination and established the fact that it was a miscarriage occurring in September or October 1951 and then 2 at a later period and I simply want to establish the dates so I can determine whehter they coincided with other illnesses which she claimed. It is proper cross examination.

The Court: Well——

Mr. Nesbett: I tried to confine my direct to the period that would only be pertinent to the jury in this case in determining whether her illness might have been caused by some other factor.

The Court: Well, you mean you attempted to confine [87] your testimony to a time subsequent to these alleged defamatory statements?

Mr. Nesbett: I tried to do that, but I will admit that she did mention 2 or 3 of them and some of them were prior to—long prior to the date that Mrs. Hollmann made these remarks. What bearing would they have on this case then?

The Court: Of course, the only bearing that these incidents could have is as they might account for her later state of health and I suppose that is the reason why counsel for the defense is going into them, otherwise they would be absolutely immaterial.

Mr. Butcher: I agree, Your Honor, and that is the purpose for which I desire—I will only ask one more question on the subject.

Q. (By Mr. Butcher): Mrs. Brady, do you have what is known as susceptibility for miscarriage?
A. Yes, sir.

(Testimony of Catherine Brady.)

Q. You do? A. Yes.

Q. You also spoke of having a heart attack or heart attacks. Would you indicate if you can when you had your heart attacks?

A. Beg your pardon.

Q. Your heart attacks? [88]

A. When did I have them?

Q. Yes.

A. I hadn't had any heart attacks until—my first one was in December of 1951. It was a slight one. And in February just shortly before I left is when I had a serious heart attack—January of '51 is when.

Q. January of——?

A. January of '52 is when I had a serious one and the early part of March is when I left.

Q. Did you go to the doctor for treatment in connection with that heart attack?

A. He gave me nitroglycerin to take.

Q. Did he diagnose——

A. A heart condition, yes.

Q. In what nature?

A. He said it was mostly from a nervous condition that brought these heart attacks on. I guess something, oh, tension.

Q. I didn't ask you that. Did he give the heart condition a particular name? Did he designate——

A. No, he didn't tell me. He just told me I had a heart condition. He didn't specify the type.

Q. Did you receive from him anything in writ-

(Testimony of Catherine Brady.)

ing which would indicate what kind of heart disease it was?

A. No, I haven't got anything in writing.

Q. And he didn't specify? [89]

A. No, he didn't specify.

Q. You know there are a good many types of heart condition? A. Yes, sir.

Q. You don't know which one it was?

A. No, I don't know the name of it.

Q. Who was the doctor that treated you for that? A. Dr. Davis.

Q. Now, other than the operation which you referred to yesterday, did you have any other medical treatment Outside?

A. In 1950 when I went out for the operation?

Q. No, later, in 1951, '52 or '53?

A. In 1952 when I went out I had to see a doctor because I kept fainting. I would walk a couple of blocks and everything would turn black. I went to Dr. Elliott. He is a heart specialist in Reno.

Q. Did he diagnose your heart condition?

A. Yes, he did and he did say if I needed testimony, if I needed his to send to him and I would get it.

Q. But you don't know which type heart condition it was?

A. He did mention, Mr. Butcher, but I don't remember.

Q. In reply to a question I put to you yesterday

(Testimony of Catherine Brady.)

regarding whether you had run a gambling game in Kenai—you said no, did you not?

A. No, you didn't ask me whether I ran it in Kenai. You——

Q. I will ask you now. Did you run one down in Kenai? [90]

A. Yes, in 1952, for a short period.

Q. During some of the time that you were running that game did Mrs. Hollmann stay at your house and take care of the telephone?

A. She didn't take care of the telephone. She came in to see Marie Cox and didn't want to stay at her place so she stayed—Mr. Brady asked her to stay over to my house. We had a spare bedroom.

Q. Did you tell her on that occasion you were going out to deal cards and wanted her to take care of the telephone?

A. No, I did not. I did not ask her to take care of the telephone. Mrs. Porter is the telephone operator down there, the dispatcher.

Q. Do you know a woman by the name of Ruby?

A. Yes, I do.

Q. Have you ever filed a slander suit against anyone else?

A. I haven't filed a slander suit.

Q. Have you filed a slander suit or brought charges against a woman known as Ruby?

A. Yes.

Q. And is that for slander? A. No.

Q. What was that for?

A. I brought charges against her for maintain-

(Testimony of Catherine Brady.)

ing and operating a bawdy house and selling liquor without a license. [91]

Q. Was that down in Kenai?

A. That is in Kenai.

Q. Did she ever at any time speak any slanderous words to you? A. Beg your pardon.

Q. Did she at any time speak any slanderous words for which you contemplated bringing charges? A. No.

Q. Now, isn't it a fact, Mrs. Brady, that your relations with Mrs. Hollmann have been very friendly during all this period of time?

A. You mean the period after the accusation was made?

Q. Since the slanderous words were alleged to have been uttered?

A. No. The only time we have been friendly—the first occasion we had to talk was when Ray Barger brought his suit against the corporation or against the company and they had taken the cars and they brought me in to talk to her and that was just business because we——

Q. In fact, during all this period of time you have exchanged birthday gifts, Christmas cards, birthday cards——

A. No. I sent her a Christmas card. She, the first year, sent me a Christmas present which I did not open, refused to open and my husband and Sam Mealey opened it because they were curious to see what was in it. It stayed there 6 weeks before it was opened.

(Testimony of Catherine Brady.)

Q. Did you send her Christmas presents? [92]

A. No.

Q. Nor birthday presents?

A. No, I didn't.

Q. You are sure of that? A. Yes, I am.

Q. But you did send Christmas cards?

A. I sent Christmas cards, yes.

Q. Did you have on several occasions social meetings with Mrs. Hollmann in which you went around together?

A. Not since 1951, the latter part, nothing social.

Q. Did you hear your husband testify yesterday that you and he and Mr. and Mrs. Hollmann went out for a ride in the car and stopped at a cocktail lounge and had a drink together?

A. That was prior to this. We went up to Palmer. We went out for a day's outing. We went up to Wasilla Lake and took pictures on the way down and stopped at the different cocktail lounges.

Q. Calling your attention to your husband's testimony yesterday, at a time after this happened he said, I believe, that you and he and Mr. and Mrs. Hollmann went to a cocktail lounge here in Anchorage and had a drink. You have no recollection——

A. I have no recollection of that, Mr. Butcher.

Q. When you came back from the states at the end of that 3 months period, when you testified your husband was intoxicated and didn't meet you, did you then go back to work for [93] the Cab Company? A. No, I didn't.

(Testimony of Catherine Brady.)

Q. Did you ever go back to work for the Cab Company? A. Yes, I did.

Q. When did you go back to work?

A. It was about the latter part of October or early part of November of '52 and I was dispatching and dispatched ever since. And then worked as bookkeeper for the corporation in '52. At that time the company was incorporated.

Q. And you have worked generally ever since?

A. Until I left for Kenai. We moved down there, completely, to Kenai—we moved down there in '53. My husband went down in April and I moved down there the end of May or early part of June because we broke in another bookkeeper from the first of June in 1953.

Q. But you have worked down there driving cabs and dispatching?

A. Telephone operator, yes. In 1953 Mrs. Porter was the one that was driving days and I would only drive occasionally if the business warranted it. I have just started to drive steady or more so days in the past 6 months now.

Mr. Butcher: That is all.

CATHERINE BRADY

testifies as follows on [94]

Redirect Examination

Q. (By Mr. Nesbett): Mrs. Brady, didn't you state in response to one of Mr. Butcher's questions

(Testimony of Catherine Brady.)

that Dr. Davis diagnosed your heart ailment as being a result of nervous tension?

A. Nervous tension, yes, sir.

Q. You don't remember any Latin or medical name for the type of——

A. I can't remember, no. He said that it was due to nerves and it would—the contraction of muscles or something due to nervousness is what caused the heart ailment and also caused the blackouts I was getting.

Q. Now, did Dr. Elliott give substantially the same diagnosis as Dr. Davis? A. Yes, he did.

Q. Now, would you state whether or not your act in sending a Christmas card to Myrtle Hollmann was intended as any particular gesture of friendship?

A. Well, I have nothing against Mr. Hollmann and I didn't think there was any reason why I shouldn't send him a Christmas card. I wrote the Christmas card to Mr. and Mrs. Hollmann. It was just a gesture of Christmastime and I sent the card.

Q. I believe you said you worked in a gambling place here in Anchorage for a short while?

A. Yes, sir, I did. [95]

Q. I will ask you whether or not Mrs. Hollmann ever frequented the place?

A. Yes, she did. She came out there several times; her and Carl Hollmann both.

Q. And did they play devices or games that were going on? A. Yes, they did.

Q. Did you say several times?

(Testimony of Catherine Brady.)

A. Several times, yes, sir.

Mr. Nesbett: That is all.

Mr. Butcher: Just one moment, Your Honor. Your Honor, this is not proper recross examination. I should have asked this earlier this morning and haven't had a—I have overlooked something here.

The Court: You may ask.

Q. (By Mr. Butcher): You stated yesterday, did you not, Mrs. Brady, that your purpose in bringing this suit was to compel Mrs. Hollmann to prove the truth of her statement?

A. To bring that June up here and prove that I was in Butte, Montana, and I worked on a line.

Mr. Butcher: That is all.

Mr. Nesbett: That is all.

* * * * *

[Endorsed]: Filed July 1, 1955.

[Endorsed]: No. 14809. United States Court of Appeals for the Ninth Circuit. Myrtle Hollmann, Appellant, vs. Catherine Brady, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Third Division.

Filed: July 5, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14809

MYRTLE HOLLMANN, Appellant,

vs.

CATHERINE BRADY, Appellee.

STATEMENT OF POINTS RELIED UPON
FOR APPEAL

The points upon which appellant intends to rely on this appeal are as follows:

1. That the Court erred in giving Instruction No. 3.

2. That the Court erred in giving Instruction No. 6.

3. That the Court erred when it refused to accept defendant's proposed Instructions to the Jury, numbered 1 to 6 inclusive.

4. That the Court erred in submitting the case to the jury when there was no evidence produced by the plaintiff that the injuries of the plaintiff were the direct or approximate result of the slanderous utterance.

5. That the Court erred in denying defendant's motion for judgment of acquittal when the plaintiff rested.

6. That the Court erred in denying defendant's

motion for judgment of acquittal when both plaintiff and defendant had rested.

7. That the Court erred when it sent every other juror on the jury panel to another place, depriving the defendant of her right to have a jury drawn from the whole panel in accordance with Section 55-7-41, ACLA 1949.

Dated at Anchorage, Alaska, this 14th day of July, 1955.

/s/ HAROLD J. BUTCHER,
Attorney for the Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed July 18, 1955. Paul P. O'Brien,
Clerk.